

**UNITED STATES DISTRICT COURT
DISTRICT OF MAINE**

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| ANTONIO D. BURKE, |) | |
| |) | |
| Plaintiff |) | |
| |) | |
| v. |) | No. 1:15-cv-158-JAW |
| |) | |
| CAROLYN W. COLVIN, |) | |
| Acting Commissioner of Social Security, |) | |
| |) | |
| Defendant |) | |

**ORDER GRANTING MOTION TO RECONSIDER AND
DIRECTING FILING OF STATEMENT OF ERRORS AND FACT SHEET**

On December 2, 2015, the *pro se* plaintiff in this Social Security appeal filed a letter to me that the court has construed as a motion to reconsider my November 28, 2015, recommended dismissal of his case for failure to prosecute. *See* [Motion To Reconsider] (“Motion”) (ECF No. 18); Recommended Dismissal (ECF No. 16). For the reasons that follow, and without objection from the defendant commissioner, *see* Defendant’s Response to Plaintiff’s Motion for Reconsideration (“Response”) (ECF No. 20), the Motion is granted.

The plaintiff, who has at all times been acting *pro se* in this matter, initiated this action on April 30, 2015, and, until November 30, 2015, had filed nothing further. In my Recommended Dismissal, I noted that the court had issued procedural orders directing the plaintiff to file a Statement of Errors on two occasions, although evidently only the second order was mailed to the plaintiff, and it did not specify a precise filing deadline. *See* Recommended Dismissal at 1. I further noted that, (i) on September 17, 2015, the court issued an order directing the plaintiff to show good cause why this action should not be dismissed, (ii) the court mailed a copy of that order to the plaintiff, and (iii) the envelope containing the order was thereafter returned, with a notation from the United States Postal Service that the plaintiff had moved without leaving a forwarding

address. *See id.* at 2. I recommended dismissal of this case without prejudice based on the plaintiff's failure to respond to the second order directing him to file a statement of errors or to provide the court with a forwarding address, preventing further communications. *See id.* at 2-3.

Coincidentally, unaware of the pendency of the Recommended Dismissal, the plaintiff went to the U.S. District Courthouse in Bangor on November 30, 2015, to provide the court his updated contact information, *see* ECF No. 17, and learned of the Recommended Dismissal, a copy of which he was provided. On December 2, 2015, he filed this Motion, stating that he had been living with his ill mother in Georgia since May 2015 and that he "did an exchange of address" before he departed for Georgia but never received any response from the court. *See* Motion.

The commissioner does not oppose the Motion in light of the plaintiff's prompt response to the Recommended Dismissal, his recent filing of a change of address, and his allegation that he had earlier attempted to provide notice of a change of address. *See* Response at 2. She correctly notes that the court's primary concern, which was the plaintiff's "communications cutoff," has been remedied. *Id.* She requests that the court reset briefing deadlines. *See id.*

In consideration of the plaintiff's *pro se* status, his move to Georgia to care for his ill mother, his apparent unsuccessful attempt to provide the court with updated contact information, his provision on November 30, 2015, of his new address, his prompt filing of the Motion, and the lack of any objection, the Motion is **GRANTED**. Both the Recommended Dismissal and my September 17, 2015, order to show cause why the case should not be dismissed for lack of prosecution, ECF No. 14, are **VACATED**. Finally, the procedural order issued in this case on July 2, 2015, ECF No. 12, and amended on August 12, 2015, ECF No. 13, is further **AMENDED** as follows:

In accordance with Local Rule 16.3, the plaintiff shall file an itemized statement of specific errors **and** fact sheet **no later than December 31, 2015**. The Fact Sheet for Social Security Appeals can be found in the Forms section of the court's web page (www.med.uscourts.gov), and the itemized statement of specific errors is described in Local Rule 16.3.

The commissioner shall file an opposition to the plaintiff's itemized statement of specific errors no later than thirty (30) days after the plaintiff files his statement of errors. Any motions to dismiss, remand, or to continue shall be filed no later than thirty (30) days after the plaintiff files his statement of errors.

Unless dismissed, continued, or remanded, this case shall be set for oral argument during the week of March 14, 2016. Depending on the number of cases to be heard, the court may set oral argument on different days and in Bangor as well as Portland.

The Clerk of the Court is **DIRECTED** to mail a copy of this order to the plaintiff at the address that he provided to the court on November 30, 2015.

NOTICE

In accordance with Federal Rule of Civil Procedure 72(a), a party may serve and file an objection to this order within fourteen (14) days after being served with a copy thereof.

Failure to file a timely objection shall constitute a waiver of the right to review by the district court and to any further appeal of this order.

Dated this 14th day of December, 2015.

/s/ John H. Rich III
John H. Rich III
United States Magistrate Judge